

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL. No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO ALL
ACTIONS

**PLAINTIFFS' MOTION TO COMPEL B. BRAUN OF AMERICA TO MAKE
SUPPLEMENTAL RULE 30(B)(6) DESIGNATION**

Plaintiffs, by their attorneys, respectfully move this Court for an order compelling Braun of America, Inc. (“BBA”) to make a supplemental 30(b)(6) designation and for that deposition to occur at BBA’s expense. As set forth in the accompanying Memorandum of Law, plaintiffs’ motion should be granted for the following reasons.

1. A party responding to a Rule 30(b)(6) deposition notice must identify knowledgeable individuals as corporate designees who must make a reasonable attempt to ascertain *information reasonably available* to the organization. *Big Top USA, Inc. v. The Wittnern Group*, 183 F.R.D. 331, 339 (D. Mass. 1998) (Saris, J.) (emphasis added). BBA’s 30(b)(6) designee failed to ascertain information from its subsidiary B. Braun Medical, Inc. (“BBM”), which was reasonably available to it.

2. In addition, the attorney-client privilege “only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.” *Savoy v. Richard A. Carrier Trucking, Inc.*, 176 F.R.D. 10, 13 (D. Mass. 1997). BBA improperly refused to respond to questions regarding underlying facts

about BBM on the grounds that disclosure of those facts would violate the attorney-client privilege.

WHEREFORE plaintiffs respectfully request that this Court enter an order granting plaintiffs' motion to compel and all other relief that this Court deems just and proper.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2), the undersigned hereby certify that counsel for plaintiffs conferred with counsel for B. Braun of America, Inc. regarding the issues addressed in this motion, but were unable to resolve or narrow the issues.

Dated: August 24, 2004

By: /s/ Thomas M. Sobol
One of Plaintiffs' Counsel

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CERTIFICATE OF SERVICE BY VERILAW

Docket No. MDL 1456

I, Thomas M. Sobol, hereby certify that I am one of plaintiffs' attorneys and that, on August 24, 2004, I caused copies of PLAINTIFFS' MOTION TO COMPEL B. BRAUN OF AMERICA, INC. TO MAKE SUPPLEMENTAL RULE 30(B)(6) DESIGNATION to be served on all counsel of record by causing same to be posted electronically via Verilaw.

Dated: August 24, 2004

/s/ Thomas M. Sobol
Thomas M. Sobol